

# Morgan Lewis

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July 21, 2016

**Via ECFS**

Marlene H. Dortch, Secretary  
Federal Communications Commission  
Office of the Secretary  
445 12th Street, S.W.  
Washington, DC 20554

Re: WC Docket No. 16-143, WC Docket No. 15-247, WC Docket No. 05-25;  
RM-10593, Notice of Ex Parte Communication

Dear Secretary Dortch,

On July 19, 2016, James Butman, Group President of TDS Telecommunications Corporation (“TDS”), Steve Pitterle of TDS Metrocom, LLC (“TDS CLEC”) and the undersigned had three separate meetings with (1) staff from the Wireline Competition Bureau Front Office and the Pricing and Policy Division, specifically Eric Ralph, Deena Shetler, Pamela Arluk, Justin Faulb, William Kehoe, Joseph Price, Kristin Hopkins, Irina Asoskov, Jeremy Greenberg, Shane Taylor, Christopher Koves, William Layton and David Zesiger; (2) William Dever, Office of General Counsel and (3) Philip Verveer, Senior Counsel to Chairman Tom Wheeler.

TDS CLEC explained that AT&T’s price squeeze practices continue and urged the FCC to adopt a wholesale-retail rule that applies in both non-competitive and competitive markets. Using MetroEthernet Forum diagrams to illustrate, TDS CLEC explained that AT&T’s publicly posted bid prices for 20 and 50 Mbps Ethernet Internet services (carrier’s facilities) were significantly lower than the price AT&T offers TDS CLEC for the Ethernet loop portion (partner facilities) of the retail service AT&T bid to provide Outagamie County, Wisconsin for a two-year term. TDS CLEC reiterated that in a normally functioning market, a network operator would maximize use of its network through both retail and wholesale sales channels. For example, TDS CLEC sells T-1s to carrier customers at a rate that is less than the retail T-1 service it offers to end users but still enables TDS CLEC to make a profit on its wholesale sales.<sup>1</sup> Similarly, the RBOCs’ channel partner commissions implicitly recognize that the RBOC avoids certain costs when not selling directly in

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<sup>1</sup> Comments of TDS Metrocom, LLC, at p. 21 (filed June 28, 2016).

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the retail market.<sup>2</sup> TDS CLEC has anecdotal evidence of other AT&T price squeeze behavior, but the non-disclosure provisions AT&T includes in its retail contracts preclude TDS CLEC from obtaining supporting evidence. The Commission should ensure that any such non-disclosure provisions do not restrict a carrier's, or the Commission's, ability to determine whether a wholesale Ethernet rate is unjust and unreasonable.

Using the map handout, TDS CLEC discussed the impact in Madison, Wisconsin, of applying a competitive market test that deems competitive any census block with four or more providers with connections. TDS CLEC explained that even using four actual connections per block runs the risk of stranding customers within the block without competitive options. Unlike first tier city census blocks, second and third tier cities such as Madison Wisconsin often do not have dense business areas with tall buildings and multiple customers that provide sufficient revenue opportunities to build from a splice point at one end of the census block to the far end of the block. Without the protection of a wholesale-retail rule in competitive census blocks, the Commission risks relegating certain customers in deemed competitive blocks to a potential monopoly or duopoly. This risk only increases if the Commission reduces the test to three or two actual connections per block.

The discussion of TDS CLEC's Ethernet pricing proposal was consistent with the points and information in the attached handout. All four handouts were provided to the meeting participants.

Respectfully Submitted,

*/s/ Tamar E. Finn*

Tamar E. Finn

Counsel for TDS Metrocom, LLC

Attachments

cc: (Via E-Mail)  
Philip Verveer  
William Dever  
Eric Ralph  
Deena Shetler  
Pamela Arluk  
Justin Faulb  
William Kehoe  
Joseph Price  
Kristin Hopkins  
Irina Asoskov  
Jeremy Greenberg  
Shane Taylor  
Christopher Koves  
William Layton  
David Zesiger

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<sup>2</sup> *Id.*

**TDS Proposal - Ethernet Pricing**

- **Step One:** On an annual basis, the Commission should collect from each price cap ILEC and the Top 5 Ethernet Providers nationwide their 10 lowest retail Ethernet signed contract rates (net of all discounts) for specified bandwidths in non-competitive markets. For example, the Commission could identify the top five providers using Vertical Systems Group's "U.S. Carrier Ethernet Leaderboard," which ranks the top Ethernet providers by number of ports in service at businesses and enterprises.
- **Step Two:** For each price cap ILEC's region, the FCC should average the Top 5 providers' and that ILEC's submitted rates to determine the benchmark that applies throughout the ILEC's region. For example, the FCC should establish a benchmark that applies throughout AT&T's incumbent service area by averaging the ten lowest rates submitted by the top 5 providers and AT&T (if AT&T is not already in the top 5).
- **Step Three:** FCC uses price curve data (publicly available from provider posted rates) and the average rate at each surveyed bandwidth to develop average rates for the other commonly offered Ethernet bandwidths.
- **Step Four:** FCC adjusts the average retail rates downward to derive the benchmark rates for the wholesale "piece" of the retail Ethernet service. For example, the FCC could collect channel partner commission data along with the pricing data in Step One from the top five providers and price cap ILECs and reduce the average retail rate by at least the average channel partners' commission percentage.
- **Step Five:** FCC issues Public Notice with wholesale benchmark rates by ILEC region and bandwidth.

# COMMERCIAL BUILDINGS

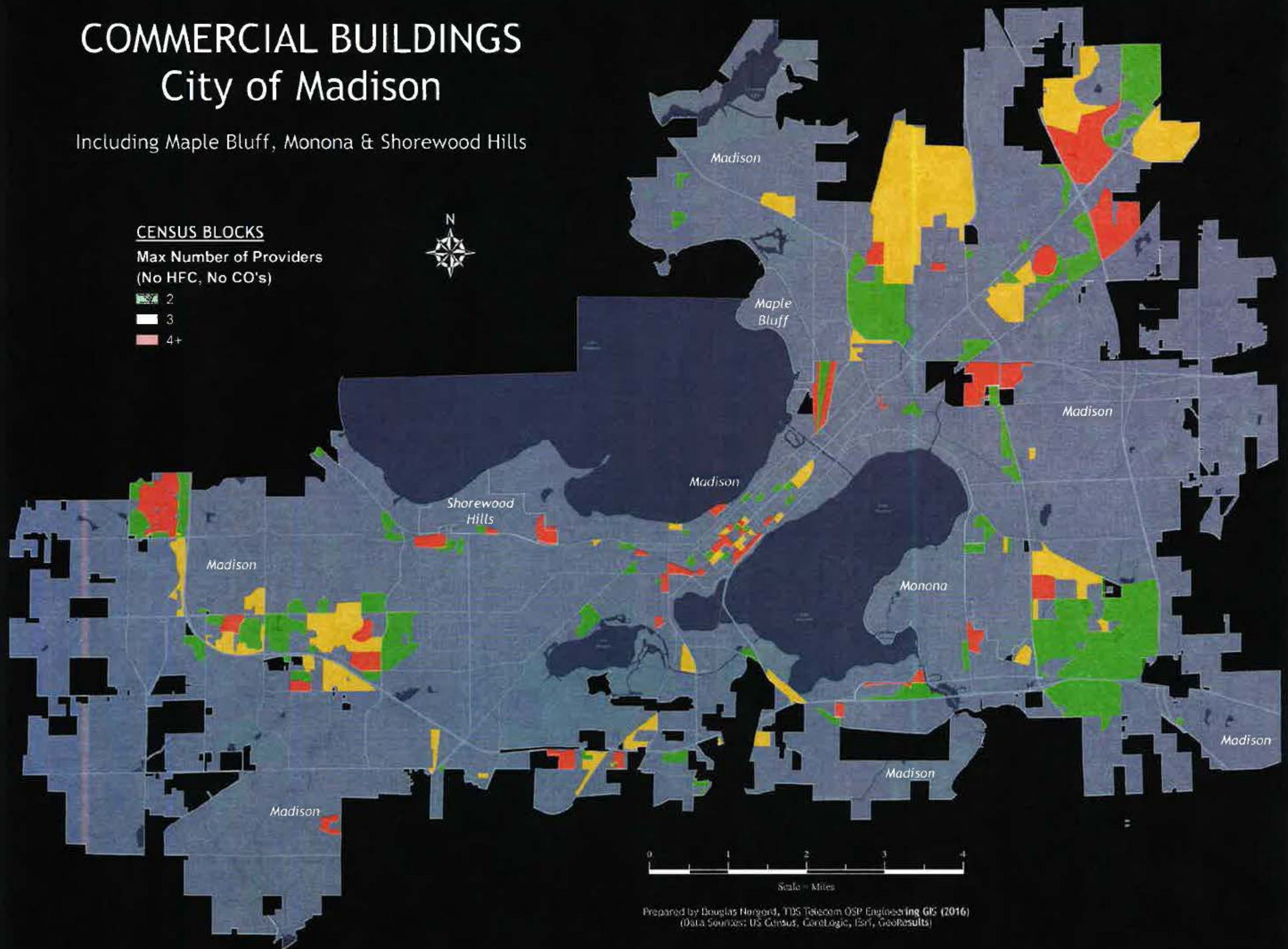
## City of Madison

Including Maple Bluff, Monona & Shorewood Hills

### CENSUS BLOCKS

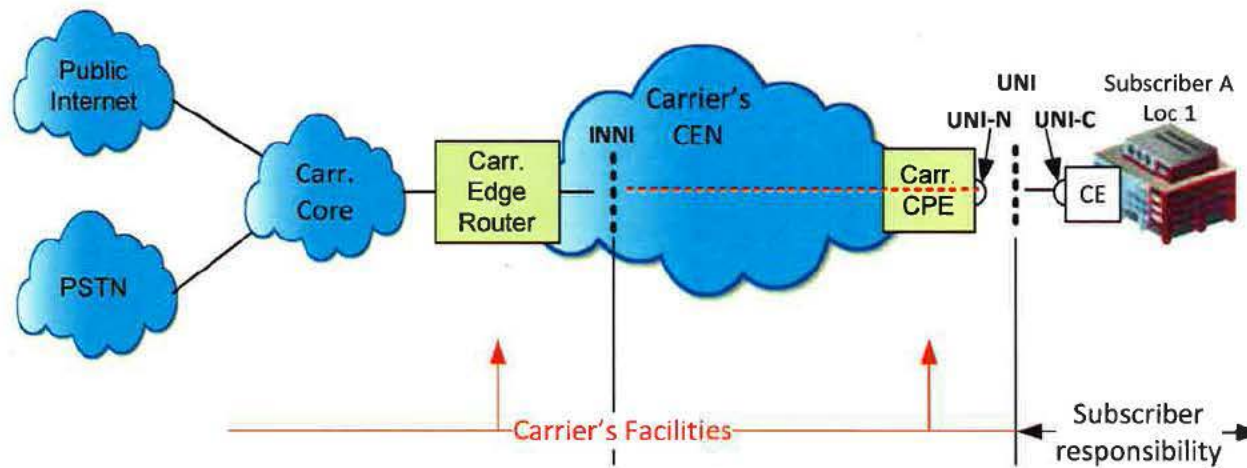
Max Number of Providers  
(No HFC, No CO's)

-  2
-  3
-  4+



Prepared by Douglas Hargood, TDS Telecom OSP Engineering GIS (2016)  
(Data Sources: US Census, CoreLogic, Esri, GeoResults)

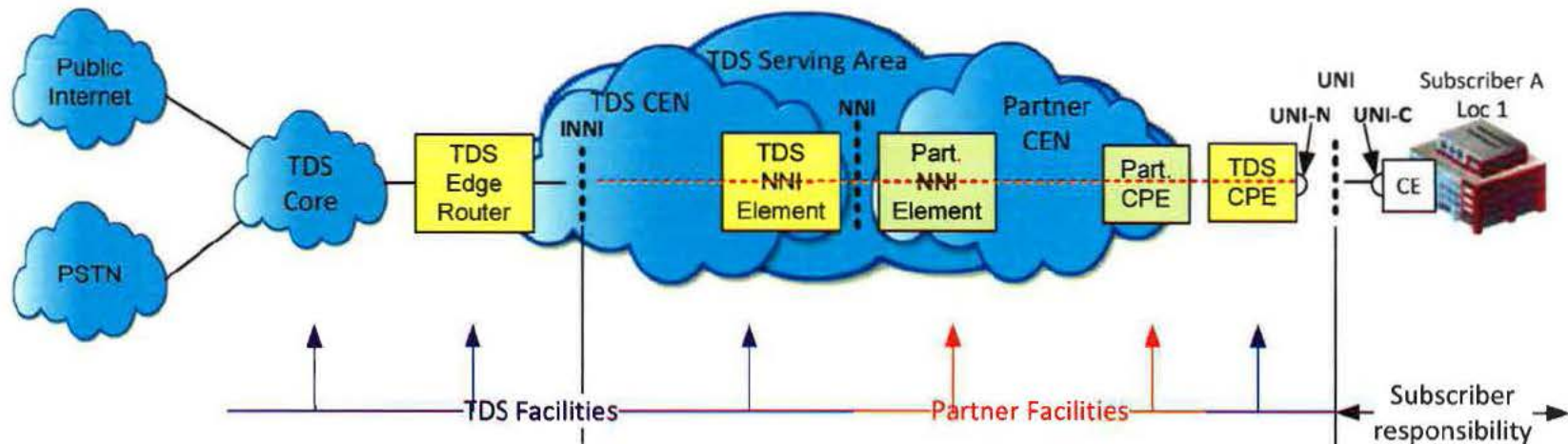
Carrier's Retail VoIP and/or Internet Subscriber served entirely by their Ethernet Access Network:



**Key:**

- CE – Customer Equipment (generic)
- CPE – Customer Prem Equipment
- INNI – Internal Network-to-Network Interface
- UNI – User-to-Network Interface
- UNI-C – User-to-Network Interface (Customer side)
- UNI-N – User-to-Network Interface (Network side)

**TDS Retail VoIP and/or Internet Subscriber served in conjunction with an Ethernet Access Partner:**



Key:

CE – Customer Equipment (generic)

CPE – Customer Prem Equipment

INNI – Internal Network-to-Network Interface

NNI – Network-to-Network Interface (generic)

**Partner CEN – Partner Carrier Ethernet Network**

TDS CEN – TDS Carrier Ethernet Network

**TDS Serving Area** – The total footprint covered by combining the TDS CEN and a Partner CEN

UNI – User-to-Network Interface

UNI-C – User-to-Network Interface (Customer side)

UNI-N – User-to-Network Interface (Network side)